



City of Detroit Board of Ethics

2021 ANNUAL REPORT

CITY OF DETROIT BOARD OF ETHICS
Butzel Family Center 7737 Kercheval Rd., Suite 213 Detroit, MI 48214

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Atty. David W. Jones - Vice-Chairperson
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Letter to the Mayor and City Council

DATE: April 1, 2022

TO: Hon. Michael E. Duggan, Mayor
Hon. Mary Sheffield, City Council President
Hon. James Tate, City Council President Pro Tem
Hon. Angela Whitfield-Calloway, City Council Member
Hon. Scott Benson, City Council Member
Hon. Latisha Johnson, City Council Member
Hon. Gabriela Santiago-Romero, City Council Member
Hon. Fred Durhal, III, City Council Member
Hon. Mary Waters, City Council Member
Hon. Coleman A, Young, II, City Council Member

FROM: Detroit Board of Ethics

SUBJECT: Annual Report of the Board of Ethics for 2021

The Detroit Board Ethics Annual Report includes its activities beginning January 1, 2021, to December 31, 2021. In accordance with Section 2-5-108 of the Ethics Ordinance this Report contains:

1. An analysis of Board activities, including Advisory Opinions, requested and issued; Complaints filed with each disposition; and Investigations opened and their disposition.
2. A compilation of Advisory Opinions issued; and,
3. Recommendations for improvement of the Disclosure Requirements, Standards of Conduct, and the administration and enforcement of the Ordinance.

Additionally, this Report includes training activity updates, which is included in the City of Detroit Charter at Sec. 2-106.9 - Powers and Duties subsections 4 and 5.

cc: Honorable Janice M. Winfrey, Detroit City Clerk

Department Directors

Agency Leaders

STATEMENT OF PURPOSE

Detroit City Code 2020 Sec. 2-5-1.

The disclosure requirements and standards of conduct apply to public servants including the Mayor, City Council Members, the City Clerk, elected members of the Board of Police Commissioners, appointive officers, appointees, employees, and contractors as defined in Section 2-5-3 of this Code.

The purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests.

(Code 1984, § 2-6-1; Ord. No. 22-00, § 1(2-6-1), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-1), eff. 8-31-2012)

Commentary – This article is adopted in compliance with the provisions of Section 2-106.1 of the Charter, entitled "Ethical Standards of Conduct," that the City Council may enact an ordinance necessary to effectuate the operation of Sections 2-106.1 through 2.106.14 of the Charter. Furthermore, a review of the best practices of the federal, state and municipal governments reveal that most jurisdictions have enacted codes governing the standards of conduct for elected and appointed public officials as well as employees.

The integrity of City government and public trust and confidence in elective officers and employees require that public servants be independent, impartial and responsible to the People; that government decisions and policy be made within the proper channels of the governmental system; and that public servants be prohibited from participating in matters that affect their personal or financial interests. The purpose of this article is to establish guidelines for ethical standards of conduct for all City government officials and employees by defining those acts or actions that are incompatible with the best interests of the City and by mandating disclosure by public servants of private financial or other interests in matters affecting the City.

Although the article addresses the subject matters set forth in Sections 2-206.1 through 2-106.14 of the Charter, it cannot by its terms and provisions specifically address every conceivable circumstance, situation or question that may raise an ethical consideration in the course of City government. Of course, every situation or issue arising under the article must be evaluated based on its individual merits. However, the article is intended to declare integrity in governmental decision making, operations and processes as a fundamental value and policy of City government to which all public servants in City government should strive to adhere at all times. To underscore the paramount

importance of this policy, the article should be liberally construed so as to fully protect the public interest, and to effectuate the provisions of Sections 2-106.1 Through 2.106.14 of the Charter that the article shall prohibit actions by elective officers, appointive officers, appointees, employees, or contractors.

REQUIREMENTS

Sec. 2-5-108. - Annual report.

- (a) On or before April 1st of each year, the Board of Ethics shall issue simultaneously to the Mayor and to each member of the City Council a report that contains:
 - (1) An analysis of all activities of the Board of Ethics, including the number of advisory opinions requested and the number issued, and the number of complaints filed and the disposition thereof during the preceding calendar year;
 - (2) A compilation of opinions that have been issued during the preceding calendar year; and
 - (3) The recommendations of the Board of Ethics, if any:
 - a. For improvement of the disclosure requirements that are found in Division 2 of this article, and of the standards of conduct that are found in Division 3 of this article; and
 - b. For improvement of the administration and enforcement thereof.
- (b) In addition, a copy of the annual report shall be submitted to the City Clerk, each department director, each agency head, and the Detroit Public Library Main Branch.

(Code 1984, § 2-6-98; Ord. No. 43-06, § 1(2-6-98), eff. 12-15-2006)

Sec. 2-5-105. - Funding and staff.

- (a) In accordance with Sections 2-106.13 and 8-214 of the Charter, the City shall annually appropriate funds sufficient to enable the Board of Ethics to perform its duties as set forth in the Charter and this article, including hiring adequate staff.
- (b) The Corporation Counsel shall assign legal counsel from the Law Department who shall provide representation and advice to the Board of Ethics on legal matters. The Board of Ethics may refer a matter to the City Attorney from the Law Department who represents the Board for appropriate action. Upon completion of review and consideration, the City Attorney shall report the Attorney's findings to the Board of Ethics. Any retention of outside counsel on behalf of the Board of Ethics shall be governed by the provisions of Section 7.5-201(1) of the Charter.

(Code 1984, § 2-6-95; Ord. No. 43-06, § 1(2-6-95), eff. 12-15-2006; Ord. No. 18-12, § 1(2-6-95), eff. 8-31-2012)

Commentary Section 8-214 of the Charter requires that the City establish, through enactment of an ordinance, a proportional funding method for certain oversight agencies, including the Board of Ethics. This requirement ensures that, because of its importance to the efficient and ethical operation of City government, the function provided by the Board of Ethics, as an oversight agency, is not hampered in its ability to properly function.

ANNUAL BUDGET

The 2021-2022 Budget of the Board of Ethics was \$454,660. The bulk of the expenditures were used for Salary and Benefit costs. Funds were also used continue the development of the department website, online training program, and the purchase of presentation software licenses for use in development of outreach programs and improved best practices for the Board of Ethics.

COMPLAINTS

Complaint 2021-01 - Pursuant to Section 2-6-114(a), the Board is without authority to review this complaint because the alleged violation took place more than 182 days prior to the filing of the complaint and the complaint was dismissed.

Complaint #2021-02 - Pursuant to Sec. 2-5-145(b)(1)(a), the Board has no jurisdiction over the matter. The Board of Ethics dismisses this matter.

Complaint #2021-03 - Pursuant to Sec. 2-5-145(b)(1)(a), the Board has no jurisdiction over the matter. The Board of Ethics dismisses this matter.

Complaint #2021-04 - In accordance with Section 2-5-141(d), the dismissal of this Complaint would be without prejudice and may be reinstated and reconsidered by the Board at the conclusion of the other proceedings. The Board of Ethics dismisses this matter.

Complaint #2021-05 - the Board dismissed the Complaint pursuant to Section 2-5-145(b)(1)(e) of the 2019 Detroit City Code.

Complaint #2021-06 - the Board dismissed the Complaint with possible reconsideration due to pending proceedings in other agencies pursuant to Section 2-5-145(b)(1)(e) of the 2019 Detroit City Code.

Complaint #2021-07 - this Complaint is dismissed pursuant to Section 2-5-145(b)(2) of the

Ethics Ordinance. It is also worth noting that the July 13, 2020 reprimand is outside of the six-month time frame for filing a complaint and, as such, is not a basis for any Board action.

Complaint #2021-08 - This matter is pending determination.

Complaint #2021-09 - This matter is pending determination.

Complaint #2021-10 - This matter is pending determination.

Complaint #2021-11 - Pursuant to Section 2-5-145(b)(2), the Board of Ethics determined that Respondent did not violate the Ethics Ordinance and thereby dismissed this matter.

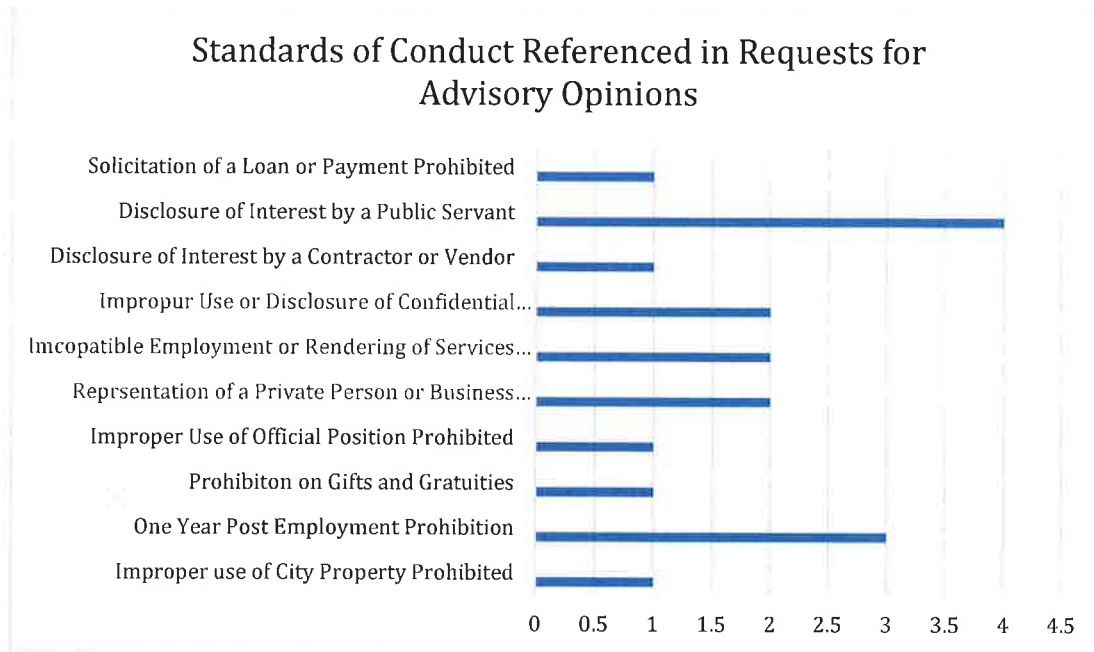
Complaint #2021-12 - This matter is pending determination

Complaint #2021-13 - This matter is pending determination

Complaint #2021-14 - This matter is pending determination

ADVISORY OPINIONS

Request for Advisory Opinions can only be filed by public servants seeking advice about their own conduct. Below is a chart that includes the most requested categories.



Request for Advisory Opinion #2021-01 submitted January 12, 2021, advisory opinion regarding the application of the Standards of Conduct. The Board of Ethics decided to issue an opinion pursuant to Section 2-5-124(b)(4) finding that they would be in violation of Sections 2-5-62, -64, -65, -66, and -67 of the 2019 Detroit City Code should he pursue the matter.

Request for Advisory Opinion #2021-02 submitted January 12, 2021, seeking an opinion on a licensing issue. The Board of Ethics decided to issue an opinion pursuant to Section 2-5-124(b)(4) finding that the Requestor would be in violation of Sections 2-5-62, -64, -65, -66, and -67 of the 2019 Detroit City Code should if the matter is pursued.

Request for Advisory Opinion #2021-03 submitted January 28, 2021, seeking an advisory opinion regarding the applicability of the Disclosure Requirements The decision of the Board of Ethics was to issue an advisory opinion pursuant to Section 2-5-124(b)(4). The Requestor is not in violation of the disclosure requirements set forth by Section 2-5-31 of the Ethics Ordinance and is encouraged to continue using the voluntary safeguards that the Requestor has put in place.

Request for Advisory Opinion #2021-04 submitted February 5, 2021, seeking an opinion on disclosure requirements. The Board of Ethics decided that it will not issue an as the Request has not identified either a Standards of Conduct or Disclosure Requirements regarding his/her own conduct.

Request for Advisory Opinion #2021-05 submitted February 10, 2021, seeking an opinion regarding the application of the Disclosure requirements. The Board voted to issue no Advisory Opinion. Pursuant to Section 2-5-124(b)(2), the Board of Ethics determined that the request did not merit review by the Board and thereby dismiss this matter.

Request for Advisory Opinion #2021-06 submitted February 10, 2021, seeking an opinion regarding the application of the Disclosure requirements and Standards of Conduct. The Board of Ethics decided that it will not issue an opinion. The Request has not identified either a Standards of Conduct or Disclosure Requirements regarding his/her own conduct.

Request for Advisory Opinion #2021-07 submitted February 10, 2021, seeking an opinion regarding the application of the Disclosure Requirements. The Board decided to issue no Advisory Opinion. Pursuant to Section 2-5-124(b)(2), the Board of Ethics determined that the request did not merit review by the Board and thereby dismiss this matter.

Request for Advisory Opinion #2021-08 submitted February 10, 2021, seeking an opinion regarding the application of the Disclosure Requirements. The Board voted to issue no Advisory Opinion. Pursuant to Section 2-5-124(b)(2), the Board of Ethics determined that the request did not merit review by the Board and thereby dismiss this matter.

Request for Advisory Opinion #2021-09 submitted February 10, 2021, seeking an opinion regarding the application of the Disclosure Requirements. The Board of Ethics determined that the request did not merit review by the Board and thereby dismiss this matter.

Request for Advisory Opinion #2021-10 submitted February 10, 2021, seeking an opinion regarding the application of the Disclosure Requirements. The Board of Ethics determined that the request did not merit review by the Board and thereby dismiss this matter.

Request for Advisory Opinion #2021-11 submitted February 13, 2021 seeks an advisory opinion regarding the application of the Standards of Conduct. The Requestor withdraw the request and the Board dismissed the matter.

Request for Advisory Opinion #2021-12 submitted March 11, 2021, seeking an advisory opinion regarding the application of the Standards of Conduct. As to the Requestor

prospectively pursuing a part-time consulting position with another company. The Board of Ethics decided to issue an opinion noting the Requestor would be in violation of Section 2-5-64 and Section 2-5-65 of the Ethics Ordinance.

Request for Advisory Opinion #2021-13 submitted April 20, 2021, seeking an advisory opinion regarding the application of Disclosure Requirements. Therefore, there is no violation of the Ethics Ordinance's disclosure requirement. It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4).

Request for Advisory Opinion #2021-14 submitted April 21, 2021, seeking an advisory opinion regarding the application of Standards of Conduct. It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4). the Requestor would not be in violation of the Ethics Ordinance.

Request for Advisory Opinion #2021-15 submitted May 5, 2021, seeking an advisory opinion regarding the application of disclosure requirements and standards of conduct. It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4), there is no violation of the Ethics Ordinance's disclosure requirements. However, the Requestor would be in violation of Section 2-5-68 for the acceptance of any form of payment.

Request for Advisory Opinion #2021-16 submitted August 19, 2021, seeking an opinion regarding disclosure requirements and standards of conduct. It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4). The Requestor will not be in violation of the disclosure requirements or standards of conduct set forth by the Ethics Ordinance and is encouraged to continue using the voluntary safeguards that the Requestor has put in place.

Request for Advisory Opinion #2021-17 submitted October 19, 2021, seeking an advisory opinion regarding the application of the Standards of Conduct. This matter is still pending.

Request for Advisory Opinion #2021-18 submitted October 25, 2021, seeking an opinion regarding the application of the Standards of Conduct. It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4).

Request for Advisory Opinion #2021-19 submitted November 3, 2021, seeking an advisory opinion regarding the application of the Standards of Conduct. This matter is still pending.

Request for Advisory Opinion #2021-20 submitted November 8, 2021, seeking an advisory opinion regarding the application of the Standards of Conduct. This matter is still pending.

Request for Advisory Opinion #2021-21 submitted December 22, 2021, seeking an opinion regarding application of the Standards of Conduct. This matter is still pending.

ETHICS TRAINING

In 2021, the Board of Ethics trained Public Servants primarily through the Online training portal established in 2020. The training portal allows for self-paced training on an individual basis that satisfies the annual training requirement outlined in **Sec. 2-5-101(a)** of the Ethics Ordinance.

In 2021, 757 Public Servants completed the online training provided by the Board of Ethics compared to the 141 that completed the training in 2020.

The Board of Ethics has developed additional departmental scheduling and partnered with the Talent Development & Performance Management Division of Human Resources to deliver Ethics Trainings across their LEAP and Supervisor Training Series in order to reach more Public Servants and ensure a greater number complete training each year.

BOARD COMPOSITION

From January 1 to December 31, 2021 the members of the Board of Ethics included:

Atty. Kristin Lusn, Chairperson, Mayoral Appointment
Atty. David Jones, Vice Chairperson, Mayoral Appointment
Mario L. Morrow, Sr., Member, City Council Appointment
Byron Osbern, Member, Mayoral Appointment
Michael Rafferty, Member, Joint Appointee
Freda G. Sampson, Member, City Council Appointment
Robert Watt, Member, City Council Appointment

During this year, the Board accepted the resignation of Freda G. Sampson (April 2021). Ms. Sampson's term expiration date was June 30, 2024. A City Council appointment for the remainder of Ms. Sampson's term has been requested to bring the board up to full competency.

MEETINGS

During the period of this Report, the Board was scheduled for 12 general meetings. Out of those scheduled, seven general meetings and four (4) special meetings were held due to cancellations of four (4) meetings due to lack of quorum.

OTHER ACTIVITIES

During this reporting period, the Board also received seven (7) unofficial request/complaints for decisions and opinions from public servants and the public. Due to the requests/complaints failing to be submitted officially, the Board was unable to address the matters. The Ordinance requires signed and notarized Complaints. It also requires Request for Advisory Opinions to be signed. Both must be on official forms.

The Executive Director resigned her position in April 2021 and the Board relaunched the search for an Executive Director. The Board developed the job specifications, distribute the notice of hiring, and accept resumes. The Board received thirty-four (34) applications and narrow the search down to four candidates after the receipt of a writing sample. The remaining four candidates have been scheduled for interviews in March 2022. It is anticipated that the position will be filled in the next calendar year.

The Board continues to have three (3) FTEs and filled the trainer position in September 2021 with the hiring of Michael O'Connell under a service contract. Mr. O'Connell will lead the internet and training innovation as well as social media.

The Board staff remains working remotely due to the pandemic and construction at the Butzel Family Center building. At this time, there is no date when staff will be able to return fully to work in the office.

Recommendations for Improvements of the Board of Ethics and Ethics Ordinance

The Goal of the Board of Ethics this year is to review, consider and revise the following:

- To hire and effectively train an Executive Director.
- To fill the City Council board vacancy position and any future vacancies in a timely manner.
- To revise the forms submitted to the Board of Ethics.
- To review the Administrative Rules applying best practices.
- To review the Hearing Rules to consider best practices.
- To evaluate more substantive decision abilities of the Board including the application of fines and admonishments.
- To clarify the jurisdiction of the Board.
- To consider procedures to revisit opinions or decisions of the Board.
- To consider the ability to withdraw Complaints or Request for Advisory Opinions.
- To evaluate timelines and their application on the Board's ability to make timely decisions.
- To consider the scope and time required of training Public Servants and the application of a more robust learning management system.
- To consider the application of a case management system which is a best practice in oversight agencies.
- To have Board staff and the Board trained in best practices, strategic planning, and continue to develop relationships in the Ethics and Oversight agency communities.
- To continue to develop resources for Public Servants identifying the guidance and services of the Department.
- To continue to address the budgetary and staffing needs of the department.
- To continue to develop community relationships through presentations and marketing.

- To work toward opinions and decisions providing a plain language description.
- To evaluate definitions as applied in the Ethics Ordinance.

Any questions and inquiries about the Board of Ethics 2021 Annual Report can be sent to its Staff at Ethics@detroitethics.org.

cc: Hon. Janice Winfrey, City Clerk



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Advisory Opinion #2021-01
Issued: March 16, 2021

Advisory Opinion #2021-01: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) of the Code. In summary, for a period of one year following the end of his employment with the City, the Requestor must abide by Section 2-5-71 in its entirety, including no lobbying or appearances, restricted compensation, and restricted employment. Review the Conclusion Section in its entirety for the details of this Opinion.

I. Procedural Background

The Board of Ethics (the Board) received this matter on January 12, 2021, by electronic communication. In accordance with Sec. 2-5-121(a) of the Detroit Ethics Ordinance (the "Ordinance"), the Request was submitted by a current public servant. The Public Servant provide no indication for confidentiality, however, in accordance with Sec. 2-5-122, the Requestor's identity shall remain confidential.

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (Code), the 91-day period for review of this request concludes on April 13, 2021. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on July 13, 2021.

At its meeting on March 16, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121(b) of the Ordinance because the Requestor was a public servant, the Request addresses the

Requestor's behavior as applied to the Standards of Conduct, and the Request is in writing. The Board heard a Preliminary Analysis from legal counsel on the same day and after consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant to Section 2-5-124(b)(4) of the Ethics Ordinance.

II. Information from the Request

At the time of this filing, the Requestor was a public servant and was the [REDACTED] [REDACTED] for the Department of Transportation (DDOT). He included his job description and a letter with the Request. The letter states in part:

I am currently a public servant employed as the [REDACTED] [REDACTED] for the Detroit Department of Transportation (DDOT). My job description is attached as Exhibit A. I have accepted an employment offer as a [REDACTED], a private entity that consults on transportation projects throughout the United States, and I am requesting an advisory opinion on this employment.

The question presented to the Board is whether the Requestor, who is a former public servant, may work for a private entity that may have a contract with the City if the Requestor had been involved with a project to which the contract pertains. The Requestor has indicated that for a one-year period after beginning employment with the private entity, that he will not work on any City of Detroit projects.

III. Applicable Charter and Ordinance Sections

The 2012 Detroit City Charter provides at Section 2-106.1 that the purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.5 of the 2012 Detroit City Charter codified at Section 2-5-71 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-71. - One-year post-employment prohibition.

- (a) Subject to state law, for one year after employment with the City, a public servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body, or receive compensation for any services in connection with any matter in which the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.
- (b) Subject to state law, for one year after employment with the City, a public servant shall not accept employment with any person who, or entity which, did business with the City during the former public servant's tenure where the public servant was in any way involved in the award or management of the contract, or the employment would require the sharing of confidential information.

IV. Application of the Charter and Code to the Information Presented

Part (a) of Sec. 2-106.5, and of Sec. 2-5-71, provide guidance about a public servant's lobbying and advocacy and receiving compensation for a matter that the public servant had control over or obtained knowledge as part of their official duties for the City. As such, before the completion of the 1-year post-employment prohibition, Requestor cannot personally lobby or appear before City Council (or any board, commission, department, agency or body), or receive any compensation in connection with a matter in which he was directly concerned, personally participated, actively considered, or acquired knowledge during his City employment as part of his official duties.

Part (b) of Sec. 2-106.5, and of Sec. 2-5-71, prohibits public servants from accepting employment with an outside entity where they had influence over the award or management of a contract to that entity or the employment would require sharing confidential City information. As such, before completion of the 1-year post-employment prohibition, Requestor cannot accept direct employment with any person or entity that did business with the City and the Requestor was in any way involved in the award or management of the contract or the employment would require disclosing confidential information not available to the general public.

[The Conclusion Follows On the Next Page]

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-01.

For a period of one year following the end of his employment with the City, pursuant to Section 2-5-71(a), the following restrictions will apply to the Requestor:

- The Requestor must not lobby, or appear before, the City Council or any department, agency, board, commission, or other body of the City in relation to any matter that he was directly concerned with, personally participated in, actively considered, or acquired knowledge about, while he was in the course of performing his duties for the City.
- The Requestor must not receive compensation for performing any services in relation to any matter that he was directly concerned with, personally participated in, actively considered, or acquired knowledge about, while he was in the course of performing his duties for the City.

The above restrictions would include any projects in which the Requestor was directly concerned, personally participated, actively considered, or acquired knowledge about while working for the City.

Additionally, for a period of one year following the end of the Requestor's employment with the City, pursuant to Section 2-5-71(b) of the Code, the Requestor must not accept employment with any person who, or entity that, provided goods or services to the City pursuant to a contract, other than a personal services contract with the Requestor, if:

- The Requestor was in any way involved in the award or management of the contract pursuant to which the person or entity provided goods or services to the City while he was a public servant; or
- The employment would require the Requestor to share confidential information, which refers to information that is obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to applicable laws, and that the public servant is not authorized to disclose.

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Dated: April 16, 2021



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Robert Watt

Advisory Opinion #2021-02
Issued: March 16, 2021

Advisory Opinion #2021-02:-It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) of the Code in response to Request for Advisory Opinion 2021-02. Because of the Requestor's position within his department and the access he has to certain information, the Board of Ethics finds that he would be in violation of Sections 2-5-62, -64, -65, -66, and -67 of the 2019 Detroit City Code should he pursue a Detroit Legacy Adult Use Retailer Establishment License and utilize said license as a recreational marijuana retailer in the City of Detroit. The Board believes his employment in this department creates a conflict of interest that cannot be reconciled. The Board welcomes the Requestor to file another Request if his division, department or employment status changes.

I. Procedural Background

The Board of Ethics (the Board) received this matter on January 12, 2021, by email communication . In accordance with Sec. 2- current 5-121(a) of the Detroit Ethics Ordinance (the "Ordinance"), the Request was submitted by a current public servant. The Public Servant provide no indication for confidentiality, however, in accordance with Sec. 2-5-122, the Requestor's identity shall remain confidential.

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (Code), the 91-day period for review of this request concludes on April 13, 2021. Section 2-5-1 24(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on July

13, 2021.

At its meeting on March 16, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121(b) of the Ordinance because the Requestor was a public servant, the Request addresses the Requestor's behavior as applied to the Standards of Conduct, and the Request is in writing. The Board heard a Preliminary Analysis from legal counsel on the same day and after consideration and discussion of the issues presented, the Board voted to issue this Advisory Opinion pursuant to Section 2-5-124(b)(4) of the Ethics Ordinance.

II. Information from the Request

The Requestor is a public servant and employed with [REDACTED] as a [REDACTED].

The City's website provided that buildings inspectors work in the Development Resource Center, which is responsible for permitting and licensing activities as well as assisting customers through the permit process. Generally, the Plan Review Division, also on the City's website, is responsible for ensuring that developments or building projects comply with the City of Detroit adopted Ordinances and Codes. The staff performs review of the permit application and plans for the proposed projects.

The Requestor submitted the appropriate form and it states:

I will be applying for a Detroit Legacy Adult-Use Retailer Establishment License. Approval for these projects will come from the department that employs me. I am currently the [REDACTED]. The plan reviewers that I [REDACTED] will be reviewing my plans and the plans of my competitors. I am not actively involved in the reviewing of plans [REDACTED] on a daily basis. Only [REDACTED] [sic] occasionally. I am requesting an Advisory Opinion on the matter.

The question presented to the Board is whether the Requestor, who is a public servant, may apply for a Detroit Legacy Adult Use Retailer Establishment License and utilize the license as a recreational marijuana retailer in the City of Detroit. The approval for each such project comes through [REDACTED]; the Requestor is a [REDACTED] in this Department. Requestor indicates that he [REDACTED] the Plan Reviewers that would review his plans and the plans of his competitors.

III. Applicable Charter and Ordinance Sections

The 2012 Detroit City Charter provides at Section 2-106.1(1) that the purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.1(2) of the 2012 Detroit City Charter codified at Sections 2-5-31, -62, -64, -65, -66, and -67 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-31. - Disclosure of interests by public servants.

(a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority over a pending matter shall disclose:

(1) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before City Council;

(2) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before or within any office, department, or agency of the City; and

(3) Any interest that the public servant, or an immediate family member has in real or personal property that is subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or a development agreement.

(b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Code 1984, § 2-6-31; Ord. No. 18-12, § 1(2-6-31), eff. 8-31-2012)

Commentary— This provision implements the directive of [Section 2-106.2](#) of the Charter that this article shall provide for the disclosure of any financial interest, which a public servant, or the public servant's immediate family member, has in any contract or in any real or personal property, that is the subject of a governmental decision by the City or any agency of the City over which the public servant exercises significant authority in the performance of the public servant's duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*

Sec. 2-5-62. - Improper use or disclosure of confidential information prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly use or disclose to third parties confidential information, which is gained by reason of the public servant's official duties, concerns the property, government or affairs of the City, or any office, department or agency thereof, and is not available to members of the public.

(Code 1984, § 2-6-62; Ord. No. 18-12, § 1(2-6-62), eff. 8-31-2012)

Sec. 2-5-64. - Incompatible employment or rendering services prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly engage in or accept employment, or knowingly render services, for a private or public interest where such employment or service is in conflict or incompatible with the proper discharge of the public servant's official duties for the City, or where such employment or service is reasonably expected to impair the public servant's independence of judgment or action in the performance of

the public servant's official duties for the City.

(Code 1984, § 2-6-65; Ord. No. 22-00, § 1(2-6-65), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-65), eff. 8-31-2012)

Sec. 2-5-65. - Representation of private person, business, or organization prohibited; exceptions.

A public servant shall not act as an agent, attorney, or representative for another person, business, or organization in any matter that is pending before a City agency, except that:

(1) A public servant may represent another person, business, or organization before a City agency where such representation is a required part of the public servant's official duties;

(2) A public servant who is an uncompensated member of a City board, commission, or other voting body may act as an agent, attorney, or representative for another person, business, or organization in a manner that is pending before a City agency, other than the board, commission, or other voting body on which the public servant is a member; or

(3) A public servant who is compensated by the City may act as an agent, attorney, or representative for another person, business, or organization in a matter that is pending before a City board, commission or other voting body, other than the board, commission or other voting body on which the public servant serves as an appointee or as an employee, or under a personal services contract, as long as the public servant does so:

a. Without compensation; **and**

b. On the public servant's leave time; **and**

c. For appointees, in accordance with Chapter 35, Article III, Division 2, of this Code, *Vacation, Sick, Departmental, Funeral, and Jury Leave* ; **or**

d. For non-union employees, in accordance with Chapter 35, Article III, Division 2, of this Code, *Vacation, Sick, Departmental, Funeral, and Jury Leave* , and the City's Civil Service Rules; **or**

e. For union employees, in accordance with the employee's respective union contract and the City's Civil Service Rules; **or**

f. For individuals who provide services to the City pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Code 1984, § 2-6-66; Ord. No. 22-00, § 1(2-6-66), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-66), eff. 12-15-2006)

Sec. 2-5-66. - Self-interested regulation and participation prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly vote, or knowingly participate in the negotiation or making of any City contract, or any other type of transaction with any business entity in which the public servant or an immediate family member has a financial interest.

(Code 1984, § 2-6-67; Ord. No. 22-00, § 1(2-6-67), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-67), eff. 8-31-2012)

IV. Application of the Charter and Code to the Information Presented

Generally, the standards of conduct in this opinion prevent sharing of non-public information, self-dealing, and improperly influencing other decision makers. The disclosure seeks reporting of financial interests.

In his filing, the Requestor provides no details of his business plan to open an entity using a Detroit Legacy Adult Use Retailer Establishment License. He provided no information about his business structure. He included only a general statement about how his division operates but provided no detail about how it will avoid conflicts that would exist due to his supervisory position.

As it applies to **Sec. 2-5-62. - Improper use or disclosure of confidential information prohibited**, the Board believes that there is no way to reconcile the Requestor's employment status and knowledge, against his access to confidential information, as he develops his business. All meetings with ██████████ would include information about his or his competitors' status. Requestor's employment position would provide him with access to the status of his own application, competitor information and applications, and plan reviewers who perform the reviews on Detroit Legacy Adult-Use Retailer Establishment Licenses.

The Board believes excessive overlap exists between the Detroit Legacy Adult-Use Retailer Establishment License process and the Requestor's role. Requestor serves in a ██████████ and ██████████ staff has direct responsibilities for evaluating, inspecting, or processing requests from both Requestor and competing recreational marijuana facilities.

The remainder of the standards of conduct provisions focus on the preservation of a public servant's independence of judgment and action in performing his official duties with the City.

Except as otherwise provided for by applicable law, a public servant shall not knowingly use or disclose to third parties confidential information, which is gained by reason of the public servant's official duties, concerns the property, government or affairs of the City, or any office, department or agency thereof, and is not available to members of the public.

(Code 1984, § 2-6-62; Ord. No. 18-12, § 1(2-6-62), eff. 8-31-2012)

As it applies to Sec. 2-5-64. - Incompatible employment or rendering services prohibited. An inherent conflict exist simply because the Requestor holds his particular position in his department. All discussion about the Detroit Legacy Adult-Use Retailer Establishment Licenses may be an impetus to impair the Requestor's independence of judgment or action in the performance of his official duties. Owning such a business

appears incompatible with the proper discharge of the public servant's official duties for the City.

As to Sec. 2-5-65. - Representation of private person, business, or organization prohibited; exceptions. It appears that the Requestor meets none of this section's exceptions to represent his business for the Detroit Legacy Adult-Use Retailer Establishment Licenses. He meets none of the exceptions because:

This representation is not a required part of the public servant's official duties and therefore does not meet exception (1); the Requestor is not an uncompensated a City board, commission, or other voting body so he fails to qualify for exception (2). Additionally, Requestor only qualifies for exception (3) if he were representing his business before an entity other than those within BSEED and he did so with no compensation for his representation.

As to Sec. 2-5-66. - Self-interested regulation and participation prohibited.

The Requestor cannot participate in the transaction that would be the process of obtaining a Detroit Legacy Adult-Use Retailer Establishment Licenses. This section prohibits the Requestor from knowingly participating in a vote, or knowingly participating in the negotiation or making of any City contract, or other type of transaction with any business entity in which the public servant or an immediate family member has a financial interest. The Requestor cannot be involved in any transactions between the City and this business.

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-02.

Because of the Requestor's position within his department and the access he has to certain information, the Board of Ethics finds that he would be in violation of Sections 2-5-62, -64, -65, -66, and -67 of the 2019 Detroit City Code should he pursue a Detroit Legacy Adult Use Retailer Establishment License and utilize said license as a recreational marijuana retailer in the City of Detroit. The Board believes his position in this department creates a conflict of interest that cannot be reconciled. The Board welcomes the Requestor to file another Request should want to submit a detailed plan to avoid conflicts of interest.

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Dated: April 16, 2021



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Advisory Opinion #2021-03
Issued: May 28, 2021

Advisory Opinion #2021-03: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-03. The Requestor is not in violation of the disclosure requirements set forth by Section 2-5-31 of the Ethics Ordinance because the Requestor does not have a financial interest in any contract or pending matter that comes before the [REDACTED] over which he exercises significant authority.

I. Procedural Background

Request for Advisory Opinion 2021-03 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on January 28, 2021. In accordance with Sec. 2-106.1, the Request was submitted by a current public servant as defined by Section 2-5-3 of the Detroit Ethics Ordinance (the “Ordinance”).

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (“Code”), the 91-day period for review of this request will conclude on April 29, 2021. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on July 29, 2021.

At its meeting on March 16, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board heard a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue this advisory opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

The Requestor is a [REDACTED] under the [REDACTED]. In relevant part, he states:

Due to my previous Board Experience, expertise, and volunteer work and leadership in the community I was recently nominated and awarded to serve as a Board Member on an [REDACTED] for [REDACTED]. The person who nominated me for the role previously worked for the [REDACTED] [REDACTED] 2 years ago, [REDACTED]. As a [REDACTED]. She was aware of my volunteer work in the Community experience. As an [REDACTED] [REDACTED] I am to work with the [REDACTED] and Board (outside of businesshours) to give insight and ideas on how would [REDACTED] Millennials the next generation. Additionally, this nomination and Board Position comes with an honorarium of \$10,000. The term limit is one year.

The Request seeks an advisory opinion regarding the applicability of the Disclosure Requirements as to the Requestor prospectively serving as a Board Member on an [REDACTED] [REDACTED] for [REDACTED]. By this request, the Requestor seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter and 2019 Detroit City Code.

III. Applicable Charter Sections

Section 2-106.1, *Ethical Standards of Conduct*, of the 2012 Detroit City Charter provides requirements and standards to ensure that governmental decisions are made in the public's best interest. One way this purpose is executed is by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.2, *Disclosures*, of the 2012 Detroit City Charter, codified at Section 2-5-71 of the 2019 Detroit City Code. The Code states as follows:

Section 2-5-31. - Disclosure of interests by public servants.

(a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority over a pending matter shall disclose:

- (1) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before City Council;
- (2) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before or within any office, department, or agency of the City; and
- (3) Any interest that the public servant, or an immediate family member has in real or personal property that is subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or a development agreement.

(b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Code 1984, § 2-6-31; Ord. No. 18-12, § 1(2-6-31), eff. 8-31-2012)

IV. Application of the Charter and Code to the Information Presented

Section 2-5-31 of the 2019 Detroit City Code only pertains to public servants who “exercise significant authority.”¹ The Requestor identifies his job duties as follows:

The [REDACTED] performs a variety of program and project management functions including but not limited to:

- Provides advisory services to the [REDACTED] [REDACTED] [REDACTED]
- Supports the goals, objectives, strategies, and policies of the [REDACTED];
- Sources and conducts due diligence on development projects, including private companies, foundations, and funds for PRI, MRI, and impact development investments;
- Evaluates and communicates the risk/reward potential for foundations, private investments, and funds.
- Writes and manages successful grant proposals;
- Manages special projects and provides oversight and guidance to projects of high importance;
- Promotes, structures and negotiates innovative public and private partnerships with foundation and philanthropic business leaders to support City of Detroit initiatives;
- Coordinates with City Executives, City Agencies, nonprofit partners, foundations, state and federal agencies around grant opportunities;
- Tracks public and private grant and strategic resource announcements and competing proposals from other cities;
- Researches develops and requests mobility funding from local, state, federal and philanthropic sources;
- Coordinates complex grant applications between City Agencies, external partners and stakeholders;
- Works with City Agencies to find innovative solutions to fill revenue shortfalls;
- Evaluates and recommends changes to City Agencies to ensure effective cooperation in the development of successful grant proposals; and
- Develops processes for best practices informed by successful and unsuccessful funding applications.

¹ *Exercises significant authority* means having the ability to influence the outcome of a decision on behalf of the City government in the course of the performance of a public servant’s duties and responsibilities. Section 2-5-3.

Upon review of the Requestor's duties and responsibilities to the City of Detroit, it does not appear that Requestor exercises significant authority as contemplated by the ordinance.

The Commentary of Section 2-5-31 provides an excellent summary of the implementation of the Charter's directive as requiring "the disclosure of any financial interest, which a public servant, or his or her immediate family member,² has in any contract or in any real or personal property, that is the subject of a governmental decision by the city or any agency of the city over which the public servant exercises significant authority in the performance of his or her duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310 *et seq.*" Accordingly, Section 2-5-31 is not implicated by the Request.

Additionally, the information obtained by the Board's staff indicates that the Requestor has put voluntary safeguards in place to ensure that there are no violations of the Ethics Ordinance. Such safeguards include a Statement of Intent to inform the [REDACTED] at Requestor will recuse himself on any City of Detroit voting matters, a Conflict of Interest Workflow Plan that has been approved by Requestor's supervisor, and the completion of the outside employment form also approved by Requestors Supervisor.

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-03. The Requestor is not in violation of the disclosure requirements set forth by Section 2-5-31 of the Ethics Ordinance and is encouraged to continue using the voluntary safeguards that the Requestor has put in place.

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Dated: March 31, 2021

² *Immediate family member* means: (1) A public servant's spouse; or (2) A public servant's domestic partner; or (3) An individual claimed by a public servant or a public servant's spouse as a dependent under the United States Internal Revenue Code, being 26 USC1 *et seq.*, or (4) An individual who lives in the household of a public servant.



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Advisory Opinion #2021-12
Issued: May 28, 2021

Advisory Opinion #2021-12: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-12. Accepting outside employment as a [REDACTED] is reasonably expected to impair the Requestor's independence of judgment or action in the performance of her official duties with the City of Detroit, as prohibited by Section 2-5-64. Similarly, since the Requestor is applying to the City for permits on behalf of an outside employer, she is representing another business on a matter pending before a City agency, as prohibited by Section 2-5-65. Therefore, to comply with the Ethics Ordinance, the Requestor cannot accept employment with the outside employer.

I. Procedural Background

Request for Advisory Opinion 2021-12 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on March 11, 2021. In accordance with Sec. 2-106.1, the Request was submitted by a current public servant as defined by Section 2-5-3 of the Detroit Ethics Ordinance (the "Ordinance"). The Public Servant maintains confidentiality in this matter.

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code ("Code"), the 91-day period for review of this request will conclude on June 10, 2021. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on September 9, 2021.

At its meeting on May 28, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board reviewed a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue this advisory opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

Requestor serves as a [REDACTED] for the City of Detroit's [REDACTED]. On the initial Request, Requestor indicated the position with [REDACTED] is only clerical and that she does not have any say in whether a permit is approved or denied. Requestor did not provide information on what her clerical duties entail. More specifically, she did not indicate whether her clerical duties involve handling permits in any capacity, dealing with people who handle permits, or provides access to permit applicants' applications.

Requestor indicated that her perspective role as a consultant with the outside company would have begun as soon as March 12, 2021, where she would be responsible for "doing the permit application process for [the outside company]." Requestor indicated that her name, phone number, and email address that is associated with the City of Detroit ("City") would not be used in any capacity in her part-time position. However, Requestor did not indicate whether the outside company is interested in obtaining permits from the City, the work hours she is required to fulfill in her part-time position, or the name of the outside employer.

As directed by the Board during its meeting on April 29, 2021, the Board's staff obtained additional information relevant to the Request. The additional information provided clarity on Requestors duties as a [REDACTED] for [REDACTED] and insight on her position as [REDACTED]. As a [REDACTED] with [REDACTED], she works Monday through Friday, 8:00 a.m. to 4:30p.m., and her manager is [REDACTED]. Her job duties include: filing and completing requests for permits, completing data entry on permit requests, prescreening for documents, participating with Plan Review on permit requests submitted in order to ensure all supporting paperwork is present, assessing fees, and issuing requested permits once payment is made. Her position with [REDACTED] also provides her with access to information on contractors, vendors, and others who are doing business with the City.

Requestor's outside employment as a [REDACTED] would require her to work part-time (nights and weekends), at \$30 per hour, completing permits on behalf of a company that does business with the City. Requestor's job would be through [REDACTED], a staffing company located in Warren, Michigan that provides staffing for the [REDACTED]. The [REDACTED] is one of 25 companies under the [REDACTED] umbrella, an entity that has a substantial history of conducting business with the City.

Requestor indicated that she developed a conflict of interest plan where she could complete her outside employer's permits after hours. Requestor's manager, however, has indicated that he does not believe that there are any set of conditions that could be set in place that would prevent a conflict of interest. The manager has also indicated that he has received a request for outside employment from the Requestor but is awaiting the Board's decision before processing said request.

III. Applicable Charter Sections

The 2012 Detroit City Charter ("Charter") provides at Section 2-106.1, *Ethical Standards of Conduct*, that the purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.4 of the 2012 Detroit City Charter, codified at Sections 2-5-62, 63, 64, 65, and 66 of the 2019 Detroit City Code. The relevant provisions of the Code state as follows:

Section 2-5-64. - Incompatible employment or rendering services prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly engage in or accept employment, or knowingly render services, for a private or public interest where such employment or service is in conflict or incompatible with the proper discharge of the public servant's official duties for the City, or where such employment or service is reasonably expected to impair the public servant's independence of judgment or action in the performance of the public servant's official duties for the City.

(Code 1984, § 2-6-65; Ord. No. 22-00, § 1(2-6-65), eff. 8-11-2000; Ord. No. 18-12, § 1(2-6-65), eff. 8-31-2012)

Section 2-5-65. - Representation of private person, business, or organization prohibited; exceptions.

A public servant shall not act as an agent, attorney, or representative for another person, business, or organization in any matter that is pending before a City agency, except that:

- (1) A public servant may represent another person, business, or organization before a City agency where such representation is a required part of the public servant's official duties;
- (2) A public servant who is an uncompensated member of a City board, commission, or other voting body may act as an agent, attorney, or representative for another person, business, or organization in a manner that is pending before a City agency, other than the board, commission, or other voting body on which the public servant is a member; or
- (3) A public servant who is compensated by the City may act as an agent, attorney, or representative for another person, business, or organization in a matter that is pending before a City board, commission or other voting body, other than the board, commission or other voting body on which the public servant serves as an appointee or as an employee, or under a personal services contract, as long as the public servant does so:
 - a. Without compensation; and
 - b. On the public servant's leave time; and
 - c. For appointees, in accordance with Chapter 35, Article III, Division 2, of this Code, Vacation, Sick, Departmental, Funeral, and Jury Leave; or
 - d. For non-union employees, in accordance with Chapter 35, Article III, Division 2, of this Code, Vacation, Sick, Departmental, Funeral, and Jury Leave, and the City's Civil Service Rules; or
 - e. For union employees, in accordance with the employee's respective union contract and the City's Civil Service Rules; or

f. For individuals who provide services to the City pursuant to a personal services contract, in accordance with the applicable provisions of the contract.

(Code 1984, § 2-6-66; Ord. No. 22-00, § 1(2-6-66), eff. 8-11-2000; Ord. No. 43-06, § 1(2-6-66), eff. 12-15-2006)

IV. Application of the Charter and Code to the Information Presented

The Requestor serves as a [REDACTED] for [REDACTED], therefore, she is a public servant as defined in Section 2-105 of the Charter and Section 2-5-3 of the Ethics Ordinance. The Requestor seeks an advisory opinion regarding the application of the standards of conduct related to the Requestor accepting a part-time [REDACTED] position with an outside company. The Request was properly submitted; accordingly, the Requestor's conduct is regulated by the Ethics Ordinance.

According to Section 2-5-1 of the Ethics Ordinance, the standards of conduct and disclosure requirements apply to public servants "to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests." The following provisions are implicated in this Request.

A. Sec. 2-5-64. Incompatible employment or rendering services prohibited.

This provision is violated when outside employment is in conflict or incompatible with the proper discharge of the public servant's official duties for the City or where such employment is reasonably expected to impair the public servant's independence of judgment. To determine whether outside employment is in conflict or incompatible with a public servant's official duties two things must be considered: (1) whether there is a relationship between the public servant's duty to the City and outside employment, such that providing services to that outside employer creates, or could create circumstances where the public servant has to choose whether to act in the City's best interest, and (2) the time commitment to the outside employer.

According to the additional information the Requestor provided, her duties primarily involve completing permits, or permit applications, on behalf of a company that does business with the City. The Requestor's position with [REDACTED] requires her to handle the permits she would complete on behalf of the outside employer and participate in the processing of said permits, thereby allowing her to issue permits to her outside employer once the necessary payment is made. While the Requestor has indicated that she has developed a conflict of interest plan, her manager has indicated that he does not believe there are any set of conditions that could be set in place to prevent a conflict of interest. Where the interests of the City and her outside employer conflict, she would have to choose whether to act in the City's best interest. As such, acceptance of the [REDACTED] is reasonably expected to impair the Requestor's independence of judgment or action in the performance of her duties with [REDACTED], which violates Section 2-5-64

B. Sec. 2-5-65. Representation of private person, business, or organization prohibited; exceptions.

Section 2-5-65 of the Ethics Ordinance prohibits a public servant from representing an outside organization, in any matter that is subject to a decision by the City of Detroit, unless there is an applicable exception. According to the additional facts provided by the Requestor, she will complete the permit application process on behalf of an outside company. Completing the application process

on behalf of an outside company amounts to representing an outside organization. Building, demolition, sign, awning, and temporary use permits must be approved by BSEED and all other permits must be approved by some City agency. Consequently, *all permit applications* are subject to a decision by an agency of the City. Since representing the outside company is not a part of the Requestor's official duties, the Requestor is compensated by the City, the Requestor works with [REDACTED] and would be compensated by an outside employer, none of the exceptions exempt the Requestor from the general prohibition. Accordingly, since the Requestor would represent an outside organization in a matter that is subject to a decision by or pending before the City, accepting employment would be in violation of Section 2-5-65 of the Ethics Ordinance.¹

V. Conclusion

As set forth above, the Requestor accepting outside employment as a [REDACTED] is reasonably expected to impair the Requestor's independence of judgment or action in the performance of her duties with [REDACTED]. As such, acceptance of the position would violate Section 2-5-64 of the Ethics Ordinance, which prohibits incompatible employment or rendering of services. Moreover, since the Requestor would be applying for permits with the City on behalf of an outside employer, she would represent another business on a matter pending before a City agency in violation of Section 2-5-65 of the Ethics Ordinance. Therefore, the Requestor cannot accept employment with the outside employer without violating the Ethics Ordinance.

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Dated: June 14, 2021

¹ Requestor is not protected by the exceptions because she is compensated by the City and it is assumed that she will be receiving compensation from the outside company.

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Advisory Opinion # 2021-13

Issued: May 28, 2021

Advisory Opinion #2021-13: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-13. The Requestor is not in violation of the disclosure requirements set forth by Section 2-5-70 of the Ethics Ordinance. Furthermore, because the Requestor is not prohibited from attending the [REDACTED] at the [REDACTED], there is also no violation of the standards of conduct.

I. Procedural Background

Request for Advisory Opinion 2021-13 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on April 20, 2021. In accordance with Sec. 2-106.1, the Request was submitted by a current public servant as defined by Section 2-5-3 of the Detroit Ethics Ordinance (the “Ordinance”).

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (“Code”), the 91-day period for review of this request will conclude on July 20, 2021. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on October 19, 2021.

At its meeting on May 28, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board reviewed a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue this advisory opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

The Requestor serves as the [REDACTED] for three divisions: Homeland Security, the Detroit Fire Department (“DFD”), and the Detroit Police Department (“DPD”). Within this position, the Requestor [REDACTED], which include developing requests for proposals, participating in the review committee with the Office of Contracting and Procurement, maintaining ongoing relationships with vendors, and presenting vendors to City Council.

According to the Board’s Fact Finding, [REDACTED], a City of Detroit (“City”) vendor and sponsor of the [REDACTED], asked the Requestor to participate in the event on [REDACTED] at [REDACTED] expense. [REDACTED] currently serves on the Board of Directors for the Detroit Public Safety Foundation (“DPSF”) and has a longstanding business relationship with the City, as evidenced by recent contracts that have been presented to and approved by the City Council. The DPSF and DPD worked in partnership on the [REDACTED].

In 2003, the DPSF, formerly known as the Detroit Police Foundation, was incorporated in Michigan as a tax-exempt organization under Section 501(C)(3) of the Internal Revenue Code. DPSF works in partnership with citizens, businesses, and philanthropies to help the DPD and the DFD initiate programs that make Detroit a safer place to live, work and visit.¹ The DPSF focuses in the areas of training, technology, equipment, community engagement and wellness. It invests in both Departments by providing funding for needs and priorities not covered in the City’s budget. Historically, the DPSF has focused most of its funding on community engagement initiatives.² One such event is the [REDACTED]. This event specifically benefits the DPD Chief’s Neighborhood Liaison unit.³ The Chief’s Neighborhood Liaison unit plans and implements department wide community engagement initiatives, which play a vital role in connecting the community and the police department.⁴

III. Applicable Charter Sections

The 2012 Detroit City Charter provides at Section 2-106.1, *Ethical Standards of Conduct*, that the purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public’s best interest by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Sections 2-106.2 and 2-106.4 of the 2012 Detroit City Charter, codified in Sections 2-5-31 and 2-5-70 of the 2019 Detroit City Code. The relevant sections of the Code state as follows:

¹ See generally DETROIT PUBLIC SAFETY FOUNDATION, <https://www.detroitpublicsafety.org/> (last visited May 5, 2021) (being the website for DPSF).

² *Id.*

³ See generally DETROIT PUBLIC SAFETY FOUNDATION, <https://www.detroitpublicsafety.org/dpd-golf-outing/> (last visited May 5, 2021) (being the website for DPSF Detroit Police Golf Outing).

⁴ *Id.*

Section 2-5-31. - Disclosure of interests by public servants.

(a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority over a pending matter shall disclose:

(1) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before City Council;

(2) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before or within any office, department, or agency of the City; and

(3) Any interest that the public servant, or an immediate family member has in real or personal property that is subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or a development agreement.

(b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Code 1984, § 2-6-31; Ord. No. 18-12, § 1(2-6-31), eff. 8-31-2012)

Commentary— This provision implements the directive of Section 2-106.2 of the Charter that this article shall provide for the disclosure of any financial interest, which a public servant, or the public servant's immediate family member, has in any contract or in any real or personal property, that is the subject of a governmental decision by the City or any agency of the City over which the public servant exercises significant authority in the performance of the public servant's duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.301 *et seq.*

Section 2-5-70. - Prohibition on gifts and gratuities; exceptions.

(a) A public servant shall not accept gifts, gratuities, honoraria, or other thing of value from any person or entity doing business or seeking to do business with the City, is seeking official action from the City, has interests that could be substantially affected by the performance of the public servant's official duties, or is registered as a lobbyist under applicable law and Section 2-5-35 of this Code.

(b) The prohibition in Subsection (a) of this section shall not apply:

(1) To an award publicly presented to a public servant by an individual, governmental body, or non-governmental entity or organization in recognition of public service;

(2) To complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials;

(3) To a gift received from a public servant's immediate family member or relative, provided, that the immediate family member or relative is not acting as a third party's intermediary or an agent in an attempt to circumvent this prohibition;

(4) To an admission or registration fee, travel expenses, entertainment, meals or refreshments that are furnished to the public servant:

a. By the sponsor of an event, appearance or ceremony, which is related to official City business in connection with such an event, appearance or ceremony and to which one or more members of the public are invited; or

b. In connection with teaching, a speaking engagement, or the provision of assistance to an organization or another governmental entity as long as the City does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshment for the same activity.⁵

(Code 1984, § 2-6-71; Ord. No. 18-12, § 1(2-6-71), eff. 8-31-2012)

IV. Application of the Charter and Code to the Information Presented

The disclosure requirement promulgated by Section 2-5-31 is, in part, predicated upon the Requestor or an immediate family member having a financial interest in a contract or matter that is pending before City Council or an agency of the City. This Request, however, pertains to the Requestor attending the [REDACTED]. Accordingly, based on the facts provided, there is no there is no financial interest or pending contract present. This Request also does not provide any facts indicating that the Requestor, or an immediate family member, has an interest in real or personal property that is subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or a development agreement. Therefore, there is no violation of the Ordinance's disclosure requirement.

While the Request requests an advisory opinion regarding the application of the disclosure requirement, the facts of this Request implicate the standards of conduct set forth in the Ethics Ordinance. Specifically, Section 2-5-70, *Prohibition on gifts and gratuities; exceptions*, because Requestor is a public servant who is receiving something of value from an entity that is doing business with the City. Therefore, an analysis of Section 2-5-70 of the Ethics Ordinance is also necessary.

⁵ *Id.*

A public servant is prohibited from accepting gifts, gratuities, honoraria, or other things of value from any person or entity doing business or seeking to do business with the City. Here, the Requestor is receiving free entry into the [REDACTED], a thing of value, from [REDACTED], an entity doing business with the City. Therefore, pursuant to Section 2-5-70(a), Requestor is prohibited from attending the golfing event at the expense of [REDACTED], *unless an exception applies*.

The prohibition on gifts and gratuities is not applicable in cases where (1) there is an event related to official City business; (2) the admission or registration fee, travel expenses, entertainment, meals or refreshments are furnished to the public servant by a sponsor of said event and furnished in connection to said event; and (3) one or more members of the public are invited to said event. DPD, a City department, and DPSF, a non-profit that assists DPD and DFD initiate programs for the benefit of the City, have partnered to have this event, which would be of benefit to DPD Chief's Neighborhood Liaison Unit. Since a City department is the beneficiary and a partner of this event, it is related to official City business. [REDACTED] is a sponsor of the event and the Requestor would receive free admission to an event that the public is eligible to attend. Accordingly, the Requestor is not prohibited from attending the [REDACTED].

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-13. The Requestor attending the [REDACTED] does not suggest that the Requestor, or an immediate family member, has a financial interest in a contract or matter pending before the City or a City Agency. Furthermore, the facts provided do not indicate that Requestor, or an immediate family member, has an interest in real or personal property that is subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or a development agreement. Therefore, there is no violation of the Ethics Ordinance's disclosure requirement. Moreover, since the Requestor is not prohibited from attending the event at the expense of [REDACTED], there is also no violation of the standards of conduct.

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Dated: June 14, 2021

City of Detroit Board of Ethics

Kristin Lusn, Esq., Chairperson
David W. Jones, Vice Chairperson
Mario Morrow, Sr.
Byron Osbern
Michael Rafferty
Robert Watt

Advisory Opinion # 2021-14

Issued: May 28, 2021

Advisory Opinion #2021-14: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-33. The Requestor's current position with the City does not implicate Section 2-5-71 of the Ethics Ordinance, *One Year Post-Employment Prohibition*, if she obtains employment with the [REDACTED] [REDACTED] [REDACTED] [REDACTED] as a [REDACTED] [REDACTED].

I. Procedural Background

Request for Advisory Opinion 2021-14 (the "Request") was sent to the Board of Ethics (the "Board") by electronic communication and received on April 21, 2021. In accordance with Sec. 2-106.1, the Request was submitted by a current public servant as defined by Section 2-5-3 of the Detroit Ethics Ordinance (the "Ordinance").

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code ("Code"), the 91-day period for review of this request will conclude on July 21, 2021. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on October 20, 2021.

At its meeting on May 28, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board reviewed a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue this advisory opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

The Requestor currently has a position with the City as an [REDACTED] at the [REDACTED]. The [REDACTED] licenses and inspects food establishments, with the goal of preventing foodborne illness and ensuring that food is being served to the public. The Requestor's position requires she reviews incoming plans and

applications for various types of food establishments, approves licenses, and conducts routine and licensing food inspections.

The Requestor is either seeking or has obtained a position with the [REDACTED] as a [REDACTED]. In this position, she will conduct investigations and interviews with patients, infection control specialists, and hospitals based on medical information and history obtained through the Michigan Disease Surveillance System. Requestor's desire to transition from the City to [REDACTED] is due to a shift in career path interest and a desire to obtain a position that is more in line with the Requestor's educational background.

III. Applicable Charter Sections

The 2012 Detroit City Charter provides at Section 2-106.1, *Ethical Standards of Conduct*, that the purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Sections 2-5-71 of the 2019 Detroit City Code. It states as follows:

Section 2-5-31. - One year post-employment prohibition.

(a) Subject to state law, for one year after employment with the City, a public servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body, or receive compensation for any services in connection with any matter in which the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.

(b) Subject to state law, for one year after employment with the City, a public servant shall not accept employment with any person who, or entity which, did business with the City during the former public servant's tenure where the public servant was in any way involved in the award or management of the contract, or the employment would require the sharing of confidential information.

(Code 1984, § 2-6-72; Ord. No. 18-12, § 1(2-6-72), eff. 8-31-2012)

IV. Application of the Charter and Code to the Information Presented

The Request states that the Requestor wishes to "transition from the City to [REDACTED]." Therefore, it is assumed that Requestor is considering in leaving her position with the City for a position with [REDACTED]. Accordingly, the Requestor must comply with Section 2-5-71 of the Ethics Ordinance.

According to the facts provided, the Requestor has worked several positions within the [REDACTED], including [REDACTED] on [REDACTED] cases. Nevertheless, none of her previously held positions were in the field of study that he will be assigned with [REDACTED]; namely, focusing on Legionella, Shigella, Campylobacter, and other food and water born bacteria. In her current position, the Requestor is only responsible for handling applications, licensing, and conducting inspections for food establishments. Therefore, it is

unlikely that her receiving compensation for providing services as a [REDACTED] [REDACTED] would be connected to any matter in which she was concerned, participated, actively considered, or acquired knowledge of while she was working as an [REDACTED] [REDACTED] for the City. Also, the Requestor's prospective position does not require her to lobby or appear before the City or appear before the City in any capacity.

[REDACTED] does business with the City, evidenced by several contracts between the parties, serving as a fiduciary partner that the City utilized post-bankruptcy to process funds from federal and state grants. The Requestor's duties as an [REDACTED], however, do not suggest that she had any responsibility or involvement in the award or management of any potential contracts. Furthermore, because information on Detroit restaurant inspections is publicly available on the City's website,¹ it is unlikely that the Requestor accepting employments with [REDACTED] would amount to the act prohibited by Section 2-5-71(b).

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-14. It is very unlikely that the Requestor [REDACTED] [REDACTED] [REDACTED] would lead or amount to any of the acts prohibited by Section 2-5-71. Therefore, the Requestor would not be in violation of the Ethics Ordinance.

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Dated: June 14, 2021

¹ See generally CITY OF DETROIT, <https://cityofdetroit.github.io/restaurant-inspections/> (last visited May 13, 2021) (being the website for the Detroit Restaurant Inspections).

City of Detroit Board of Ethics

Kristin Lusn, Esq., Chairperson
David W. Jones, Vice Chairperson
Mario Morrow, Sr.
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Advisory Opinion # 2021-15 Issued: May 28, 2021

Advisory Opinion #2021-15: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-15. The Requestor is not in violation of the disclosure requirements set forth in Section 2-5-31 of the Ethics Ordinance. However, because the [REDACTED] and the [REDACTED] [REDACTED] are not separate and independent entities, the Requestor would be in violation of Section 2-5-68 if she accepts payment from the [REDACTED].

I. Procedural Background

Request for Advisory Opinion 2021-15 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on May 5, 2021. In accordance with Section 2-106.1, the Request was submitted by a current public servant as defined by Section 2-5-3 of the Detroit Ethics Ordinance (the “Ordinance”).

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (“Code”), the 91-day period for review of this request will conclude on August 4, 2021. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on November 3, 2021.

At its meeting on May 28, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board reviewed a Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue this advisory opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

The Requestor was appointed by Mayor Mike Duggan to be the [REDACTED] of the [REDACTED]. As [REDACTED], she works with artists, cultural organizations, philanthropic funders, and entrepreneurs to advocate for, promote, and develop arts and culture throughout the City of Detroit (the "City"). The Requestor also [REDACTED], which exists to accept tax-deductible donations to the City's arts programs and treasures. The Requestor plans to seek support from community-minded foundations, CEOs, and business-owners who have historically supported the arts, as well as Detroit residents.

Additionally, the Requestor has worked as [REDACTED] for [REDACTED], is a leading voice on issues involving children, education, race, and good government and has won numerous national, state, and local honors. In continuation of her creative endeavors, the Requestor authored a book titled [REDACTED] which was published by [REDACTED]. During a phone interview conducted by this Board's investigator, the Requestor indicated that she was approached by [REDACTED], the [REDACTED] for [REDACTED] about partnering with [REDACTED]. Specifically, the [REDACTED] would purchase the Requestor's [REDACTED] and distribute it to young girls across the country.

[REDACTED] currently does business with the City, as it is restoring the [REDACTED], which is located in the City's Corktown neighborhood. The [REDACTED] development is subject to the City's Community Benefits Ordinance because it is more than \$75 million in value and it is receiving more than \$1 million dollars in property tax abatements from the City. The City also has a relationship with the [REDACTED], as it is the Presenting Sponsor of the [REDACTED] on Belle Isle, which [REDACTED]. The Requestor, however, has indicated that the [REDACTED] has not contributed to the City's [REDACTED].

The [REDACTED] is described as the "corporate foundation and philanthropic arm" of [REDACTED]. The [REDACTED] website expressly states that "[REDACTED] and [REDACTED] are completely separate entities from [REDACTED] in New York. [REDACTED] has no control of the [REDACTED] grant-making policies or decisions." Consistent with the [REDACTED] relationship to [REDACTED], the website does not make the same distinction with regard to the [REDACTED].

III. Applicable Charter Sections

The 2012 Detroit City Charter provides at Section 2-106.1 that the purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Sections 2-106.1 and 2-106.2 of the 2012 Detroit City Charter, as well as Sections 2-5-31 and 2-5-68 of 2019 Detroit City Code. The relevant provisions of the Code state as follows:

Section 2-5-31. - Disclosure of interests by public servants.

- (a) Except as otherwise provided for by applicable law, a public servant who exercises significant authority over a pending matter shall disclose:
- (1) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before City Council
 - (2) Any financial interest, direct or indirect, that the public servant or an immediate family member has in any contract or matter pending before or within any office, department, or agency of the City; and
 - (3) Any interest that the public servant, or an immediate family member has in real or personal property that is subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or a development agreement.
- (b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

(Code 1984, § 2-6-31; Ord. No. 18-12, § 1(2-6-31), eff. 8-31-2012)

Section 2-5-68. - Solicitation or acceptance of loan or payment prohibited.

A public servant who, in the course of the public servant's duties, exercises significant authority shall not solicit or accept a loan or payment from an individual who, or entity which, is providing service to, or receiving tax abatements, credits, or exemption from the City.

(Code 1984, § 2-6-69; Ord. No. 18-12, § 1(2-6-69), eff. 8-31-2012)

IV. Application of the Charter and Code to the Information Presented

The disclosure requirement of Section 2-5-31 is, in part, predicated on the Requestor, or an immediate family member, having a financial interest in a contract or matter that is pending before City Council or an agency of the City. This Request, however, pertains to the [REDACTED] purchasing Requestor's [REDACTED] and distributing it to young girls across the country. Based on the facts provided in the Request, there is no financial interest in a contract or matter that is pending before the City Council or a City agency. This Request also does not provide any facts indicating that the Requestor, or an immediate family member, has an interest in real or personal property that is

subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or a development agreement. Accordingly, there is no violation of the Ordinance's disclosure requirements.

However, as ██████ of ██████, the Requestor exercises significant authority¹ over decisions regarding the City's investments in arts and culture. Therefore, she is prohibited from accepting payment from an entity that is receiving tax abatements, credits, or exemption from the City. As set forth above, the Requestor will supply the ██████ with ██████ in exchange for payment. The ██████ is the "corporate foundation and philanthropic arm" of ██████, which is currently receiving tax abatements from the City. Thus, the Requestor is prohibited from partnering with and receiving payments from the ██████ as it is connected and legally related to ██████. While ██████ website expressly states that the ██████ is separate from ██████, the ██████ expressly describes itself as part of ██████. Therefore, since the ██████ does not operate independently of ██████, the Requestor's acceptance of any payment from the ██████ would violate Section 2-5-68 of the Ethics Ordinance.

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-15. Based on the facts provided, there is no violation of the Ethics Ordinance's disclosure requirements. However, because the ██████ and ██████ are one and same, the Requestor would be in violation of Section 2-5-68 if she accepts any payment from the ██████.

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Dated: June 14, 2021

¹ "Exercises significant authority means having the ability to influence the outcome of a decision on behalf of the City government in the course of the performance of a public servant's duties and responsibilities." DETROIT, MICH. CODE § 2-5-3 (2019).



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Advisory Opinion #2021-16
Issued: November 3, 2021

Advisory Opinion #2021-12: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to the Request for Advisory Opinion 2021-16. Accepting outside employment as a [REDACTED] with [REDACTED] would not violate the Ethics Ordinance so long as Requestor submits a Disclosure of Interest Form disclosing all interests in his outside businesses. Similarly, Requestor would not be in violation of the Standards of Conduct with continued utilization of the safeguards put in place by [REDACTED] and the Requestor.

I. Procedural Background

Request for Advisory Opinion 2021-16 (the “Request”) was sent to the Board of Ethics (the “Board”) by electronic communication and received on August 19, 2021. In accordance with Sec. 2-106.1, the Request was submitted by a current public servant as defined by Section 2-5-3 of the Detroit Ethics Ordinance (the “Ordinance”). The Public Servant maintains confidentiality in this matter.

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (“Code”), the 91-day period for review of this request will conclude on November 18, 2021. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on February 17, 2021.

At its meeting on October 20, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-5-121 of the Ordinance. The Board reviewed a Preliminary Analysis and a Supplemental Preliminary Analysis from legal counsel on the same day, and after consideration and discussion of the issues presented, the Board decided to issue this advisory opinion pursuant to Section 2-5-124(b)(4).

II. Information from the Request

Requestor is a [REDACTED] in the [REDACTED]. According to the [REDACTED] website, "[t]he [REDACTED] is responsible for performing inspections of construction activities in order to ensure construction projects meet approved plans and are in compliance with building codes and standards." This includes inspections for private demolition work, the installation of signs and awnings, and processing insurance escrow accounts for fire repair. Moreover, the [REDACTED] also investigates complaints related to construction permit activities and issues certificates of acceptance and certificates of occupancy on new construction projects and developments.

The Requestor wants to begin conducting [REDACTED] inspections in the City of Detroit. The Requestor would perform life safety and property maintenance inspections for properties that receive [REDACTED] funding assistance, i.e., public housing, multi-family housing. The Requestor described his job duties as approximately 80% office-based reviewing staff reports and mentoring new hires. He added that when he is in the field, he conducts inspections of residential and commercial buildings for fire alarms and other specialized matters. The Requestor also indicated that he would only perform [REDACTED] inspections on days and hours that he is not scheduled to work for the City.

Additional fact finding established that, as a [REDACTED], the Respondent's duties include, amongst other things: Instructing, directing and training staff on requirements, policies, procedures and best practices for provision of departmental services; coordinating inspection activities with city departments, utility companies, contractors and property owner; preparing reports on inspection activities; and reviewing, verify, approve and issue building code clearances and violation notices. [REDACTED] reviews all staff reports and assists in specialized inspections. However, this position does not approve reports or contracts, including [REDACTED] contacts.

A review of a database listing [REDACTED] identified Respondent as only one of four in the State of Michigan, with only about 100 [REDACTED] in the United States. Requestor stated that he has been performing work outside the City of Detroit, including such inspection, about 13 years. Respondent uses his own time through his own businesses as a [REDACTED] subcontractor, and more recently as an [REDACTED] with a company named [REDACTED], in [REDACTED]. The Requestor provided his most recent Outside Employment Form dated August 27, 2021, in accordance with [REDACTED] policy.

[REDACTED] has enacted its own policies and procedures that closely mirror the Disclosure Requirements and Standards of Conduct of the Ethics Ordinance. In relevant part, [REDACTED] policy directs employees to recuse themselves from the inspection of investment properties they, or an immediate family member, own in the City of Detroit. Moreover, [REDACTED] staff must disclose all outside employment/business ownership to a department representative and the type of work that they perform for the outside employer; as well as, whether that employer is doing business with the City of Detroit or is seeking to do business with the City of Detroit. Lastly, [REDACTED] policy prohibits staff from using what they know to provide an undue competitive advantage to themselves, their family, or a third party.

III. Applicable Charter Sections

The 2012 Detroit City Charter (“Charter”) provides at Section 2-106.1, *Ethical Standards of Conduct*, that the purpose of applying and enforcing these requirements and standards is to ensure that governmental decisions are made in the public’s best interest by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.4 of the 2012 Detroit City Charter, codified at Sections 2-5-62, 63, 64, 65, 66, and 67 of the 2019 Detroit City Code, as well as Sections 2-5-31 and 2-5-34 pertaining to disclosure requirements. The relevant applicable provisions of the Code state as follows:

Disclosure Requirements

Sec. 2-5-34. - Disclosure of interests by contractors and vendors.

- (a) Except as otherwise provided for by applicable law, all contractors and vendors doing business with the City shall disclose the following:
- (1) Any financial interest, direct or indirect, that the contractor or vendor or an immediate family member has in any contract or matter pending before City Council;
 - (2) Any financial interest, direct or indirect, that the contractor or vendor or an immediate family member has in any contract or matter pending before or within any office, department or agency of the City;
 - (3) Any interest that the contractor or vendor, or an immediate family member, has in real or personal property that is subject to a decision by the City regarding purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or a development agreement;
 - (4) Campaign contributions and expenditures in accordance with applicable law;
 - (5) The identity of any immediate family member employed by the City or who is making application to the City;
 - (6) The identity of all entities and persons with any financial interest, direct or indirect, in any contract or matter that the contractor or vendor has pending before City Council; and
 - (7) The identity of all entities and persons with any financial interest, direct or indirect, in any contract or matter that the contractor or vendor has pending before or within any office, department, or agency of the City.
- (b) All disclosures that are required under Subsection (a) of this section shall be made, in writing, on a form that is created by the Law Department and sworn to in the presence of a notary public. After completion, the form shall be filed with the Board of Ethics, which shall forward a complete copy of the form to the applicable department director or agency head.

Standards of Conduct

Sec. 2-5-62. - Improper use or disclosure of confidential information prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly use or disclose to third parties confidential information, which is gained by reason of the public servant's official duties, concerns the property, government or affairs of the City, or any office, department or agency thereof, and is not available to members of the public.

Sec. 2-5-63. - Improper use of City property prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly use City property in violation of City policies and procedures.

Sec. 2-5-67. - Improper use of official position prohibited.

Except as otherwise provided for by applicable law, a public servant shall not knowingly use the public servant's official position in violation of applicable law, to improperly influence a decision of the Mayor, of the City Council, of the City Clerk, or of a member of a City authority, board, commission, committee, council or group, or other City agency.

IV. Application of the Charter and Code to the Information Presented

The Requestor serves as a [REDACTED] for [REDACTED], therefore, he is a public servant as defined in Section 2-105 of the Charter and Section 2-5-3 of the Ethics Ordinance. The Requestor seeks an advisory opinion regarding the application of the disclosure requirements and standards of conduct related to the Requestor accepting outside employment as a [REDACTED]. The Request was properly submitted; accordingly, the Requestor's conduct is regulated by the Ethics Ordinance.

According to Section 2-5-1 of the Ethics Ordinance, the standards of conduct and disclosure requirements apply to public servants "to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests." The following provisions are implicated in this Request.

A. Section 2-5-34. Disclosure of Interests by Contractors/Vendors

A review of information available date indicates that the Requestor may have significant authority in his role as a [REDACTED] in that he reviews reports from staff and is the "right hand" of the [REDACTED] Supervisor. Further, the Requestor reported that he would like to perform REAC HUD inspections in the City of Detroit – a highly specialized role with very few competitors in Michigan – which he has not performed in the past due to [REDACTED]'s policy.

As noted above, however, [REDACTED] Ethics Policy presents a plan for staff in these matters, which includes recusal and disclosure. There is substantial documentation that the City of Detroit does business with [REDACTED], and [REDACTED] plays an important role in this interaction. Accordingly, the Board may consider requiring the Requestor to disclose instances when he conducts business as a subcontractor or a direct business owner vendor performing [REDACTED] work in the City. Further, [REDACTED] should resubmit his Outside Employment form noting such work within the City, if and when it occurs.

B. Section 2-5-62. Improper Use or Disclosure of Confidential Information Prohibited

Section 2-5-62 of the Code prohibits public servants from knowingly using confidential information outside the scope of the public servant's official duties or disclosing confidential information to third parties. The Ethics Ordinance provides the following definition for the phrase "confidential information":

[I]nformation that has been obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to the Michigan Freedom of Information Act, . . . or pursuant to other law, regulation, policy or procedure recognized by law, and that the public servant is unauthorized to disclose.

The Requestor may have access to confidential information in the course of performing his duties for the City. However, the confidential information that the Requestor may have access to would not present a conflict of interest as it relates to performing outside inspections for [REDACTED] and would not lead to be any financial gain.

Nevertheless, any information that the Requestor has obtained in the course of acting as a public servant, that is not available to members of the public and that he has not been authorized to disclose, is confidential information. As such, he is prohibited from using or disclosing such information to third parties, including for purposes of the potential documents that he referenced in the Request.

C. Section 2-5-63. Improper use of City property prohibited

As provided by Section 2-5-63 of the Code, the Requestor is prohibited from "us[ing] City property in violation of City policies and procedures." There is nothing to suggest the Requestor will use City of Detroit resources while performing [REDACTED] inspections and he has noted that he will not perform these services during City hours instead using his own time. Regardless, the Requestor should be warned not to use any City property for purposes of the rehabilitation project or the documentary in order to avoid a potential violation of Section 2-5-63.

D. Sec. 2-5-67. Improper Use of Official Position Prohibited

Both the Requestor and his supervisor indicated that he does not have the ability to influence decisions that come before the City of Detroit because his position does not approve reports or contracts. While Requestor may play a significant role in the permits of [REDACTED] developers. Yet, there is no indication that he, nor any family member, performs any work for, personally represents, or has influenced any decision on behalf of [REDACTED] in matters before the City.

Regardless, if, for any reason, the Requestor finds himself in a situation where he is asked to handle an assignment on behalf of [REDACTED] in relation to his work with [REDACTED], including decisions of whether or not to approve any relevant permit requests, he must recuse himself in accordance with [REDACTED] established procedures. Furthermore, the Requestor may not receive compensation from any business or organization, including his own, unless he first receives approval from the [REDACTED] Director and submits a Request for Approval of Outside Employment Form, pursuant to the City's Outside Employment Policy.

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-16. As set forth above, if the Requestor follows the advice that is recommended and remains in compliance with [REDACTED] existing policies and procedures relating to outside employment, the Requestor will not be in violation of the disclosure requirements or standards of conduct set forth by the Ethics Ordinance and is encouraged to continue using the voluntary safeguards that the Requestor has put in place.

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Dated: November 3, 2021



Kristin Lusn, Esq., Chairperson
David W. Jones, Esq., Vice Chairperson
Mario Morrow, Sr.
Byron Osbern
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Advisory Opinion #2021-18
Issued: November 19, 2021

Advisory Opinion #2021-18: It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) of the Code. In summary, the Ethics Ord [REDACTED] [REDACTED] prohibit Requestor from accepting employment with Miller Canfield because the employment does not require the sharing of confidential information and Requestor was not involved in the award or management of the contract during his tenure as a public servant. Nevertheless, for a period of one year following his tenure with the City, the Requestor must abide by Section 2-5-71 in its entirety, including the prohibition on lobbying or appearing before City entities and applicable restrictions relating to rendering services and compensation. For further details, review the Conclusion section of this Opinion.

I. Procedural Background

The Board of Ethics (“Board”) received this matter on October 25, 2021, by electronic communication. In accordance with Section 2-106.1 of the 2012 Detroit City Charter (“Charter”), the Request was submitted by a current public servant, as defined by Section 2-5-3 of the Detroit Ethics Ordinance (“Ordinance”). The public servant maintains confidentiality in this matter.

Pursuant to Section 2-5-124(a) of the 2019 Detroit City Code (“Code”), the 91-day period for review of this request concludes on January 24, 2022. Section 2-5-124(a) also provides that the Board may, under extraordinary circumstances, extend its time to respond to a specific request by not more than 91 additional days and notify the Requestor, in writing, of the specific reasons for such extension. The 91-day extension period concludes on April 25, 2022.

At a special meeting held on November 19, 2021, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under to Section 2-5-121(b) of the Code. As such, the Board heard a Preliminary Analysis from legal counsel on the same day and, after consideration and discussion of the issues presented, voted to issue this Advisory Opinion pursuant to Section 2-5-124(b)(4) of the Ethics Ordinance.

II. Information from the Request

The Requestor is a public servant and currently serves as [REDACTED] for the City of Detroit ("City"). As [REDACTED], the Requestor is [REDACTED] and is responsible for providing legal services to the City, its constituent branches, units, and agencies of government. At times, these services are rendered by outside counsel, which is engaged and paid for through the Law Department.

The question presented to the Board is whether the Requestor may accept employment with a private entity that does business with the City, given that the prospective employment would not require the sharing of confidential information and that Requestor neither awarded nor managed the entity's contract with the City? The Requestor has indicated that for a one-year period after beginning employment with the private entity, he will recuse himself from any and all City of Detroit matters.

III. Applicable Charter and Ordinance Provisions

Section 2-106.1 of the 2012 Detroit City Charter, *Ethical Standard of Conduct*, provides that the purpose of applying and enforcing these standards is to ensure that governmental decisions are made in the public's best interest by prohibiting public servants from participating in matters that affect their personal or financial interests. This Request involves Section 2-106.5 of the 2012 Detroit City Charter, codified at Section 2-5-71 of the 2019 Detroit City Code. It states as follows:

Sec. 2-5-71. – One year Post-Employment Prohibition.

- (a) Subject to state law, for one year after employment with the City, a public servant shall not lobby or appear before the City Council or any City department, agency, board, commission or body, or receive compensation for any services in connection with any matter in which the public servant was directly concerned, personally participated, actively considered or acquired knowledge while working for the City.
- (b) Subject to state law, for one year after employment with the City, a public servant shall not accept employment with any person who, or entity which, did business with the City during the former public servant's tenure where the public servant was in any way involved in the award or management of the contract, or the employment would require the sharing of confidential information.

IV. Application of the Charter and Code to the Information Presented

The first part of Section 2-106.5 of the Charter, and Section 2-5-71(a) of the Code, provides guidance about a public servant's lobbying, advocacy, and receiving compensation for a matter over which the public servant had control over or obtained knowledge as part of their official duties for the City. As such, for one (1) year after the Requestor's employment with the City, he cannot personally lobby or appear before City Council (or any board, commission, department, agency or

body), or receive any compensation in connection with any matter that he was directly concerned, personally participated, actively considered, or acquired knowledge of as part of his official duties during his tenure.

The second part of Section 2-106.5 of the Charter, Section 2-5-71(b) of the Code, prohibits a public servant from accepting employment with an outside entity where the employment would require the sharing of confidential City information or if the servant had influence over the award or management of a contract to that entity. Supplemental information provided to the Board shows that Requestor was [REDACTED] in January 2018.

The private entity at issue, [REDACTED] has provided legal services to the City on a variety of matters, and for many years. Recently, [REDACTED] served as outside counsel to the City's Law Department during bankruptcy proceedings that began in July 2013 and continued until November 2014. During this time, [REDACTED] was [REDACTED]. Sometime after the City exited bankruptcy, [REDACTED] negotiated a fee agreement with [REDACTED], which called for an 8% discount on all attorney fees except bankruptcy attorneys [REDACTED]'s bankruptcy attorneys' rates were roughly 60% less than Jones Day's). The same [REDACTED] fee schedule continues in effect today and, at all times thereafter (including after Requestor became [REDACTED]), Deputy [REDACTED] has been the sole manager of the [REDACTED] contract.

Deputy [REDACTED] was, and continues to be, solely responsible for determining the terms and conditions of proposed amendments to the contract; although at times, he has consulted on those matters with the City's Office of Chief Financial Officer ("OCFO"). Similarly, Deputy [REDACTED] has solely approved all of [REDACTED] invoices although, on occasion, has consulted with OCFO when the matter involves that office. When questions regarding the contract have arisen, Deputy [REDACTED] has been the City representative with whom [REDACTED] has communicated.

Lastly, most of the work [REDACTED] has performed for the City over the years has been bankruptcy related. Thus, Deputy [REDACTED] has been the sole or primary City contact, although on occasion, OCFO has been involved. Other work performed by [REDACTED] for the City has mostly involved bond and transactional matters on which [REDACTED] has dealt with the OCFO or City departments, such as the jobs and economy team. [REDACTED] has done some litigation work for the City, although Deputy [REDACTED] has limited that to the extent possible because of their high rates relative to other firms the Law Department uses for litigation.

Therefore, because nothing suggests that employment with [REDACTED] would require the sharing of confidential City information and the Requestor was not involved with the award or management of the [REDACTED] contract during his tenure as a public servant, he is not subject to the one-year post-employment prohibition of Section 2-106.5 of the Charter and Section 2-5-71(b) of the Code.

[The Conclusion Follows on the Next Page]

V. Conclusion

It is the decision of the Board of Ethics to issue an advisory opinion pursuant to Section 2-5-124(b)(4) in response to Request for Advisory Opinion 2021-18.

For a period of one year following the end of his employment with the City, pursuant to Section 2-5-71(a), the following restrictions will apply to the Requestor:

- The Requestor must not lobby, or appear before, the City Council or any department, agency, board, commission, or other body of the City in relation to any matter that he was directly concerned with, personally participated in, actively considered, or acquired knowledge about, while he was in the course of performing his official duties for the City.
- The Requestor must not receive compensation for performing any services in relation to any matter that he was directly concerned with, personally participated in, actively considered, or acquired knowledge of, while he was in the course of performing his official duties for the City.

The above restrictions would include any projects in which the Requestor was directly concerned, personally participated, actively considered, or acquired knowledge about while working for the City.

Additionally, for a period of one year following the end of the Requestor's employment with the City, pursuant to Section 2-5-71(b) of the Code, the Requestor must not accept employment with any person who, or entity that, provided goods or services to the City pursuant to a contract, other than a personal services contract with the Requestor, if:

- The Requestor was in any way involved in the award or management of the contract pursuant to which the person or entity provided goods or services to the City while he was a public servant; or
- The employment would require the Requestor to share confidential information, which refers to information that is obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to applicable laws, and that the public servant is not authorized to disclose.

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Dated: November 22, 2021



Board of Ethics



